

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

FMS INVESTMENT CORP., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. 18-204C (consolidated)
THE UNITED STATES,)	
)	Judge Thomas C. Wheeler
Defendant,)	
)	
and)	
)	
PERFORMANT RECOVERY, INC., and)	
WINDHAM PROFESSIONALS, INC.)	
)	
Intervenor-Defendants.)	

NOTICE

Defendant, the United States, respectfully submits this notice pursuant to the Court's March 23, 2018 discovery order and the March 23, 2018 colloquy with the Court. ECF No. 160. Based on the Department of Education's (ED) estimate of the amount of time it needs to gather the requested materials, and the time needed to process and produce those materials after receipt from ED, we can commit to production of the document categories listed below on or before April 13, 2018:

- 2016 Government Accountability Office protest record;
- sections of any party proposal not included in the administrative record;
- evaluator worksheets including identification of past performance reference points of contact and any available evaluator record of information provided by points of contact;
- call monitoring reports from January 2015 to December 2017; and

- 2015 focused review information.

These materials will be provided to counsel for the parties under seal and pursuant to the protective order that governs this case. We may provide these materials on a rolling basis as they become available for production. In addition, the call monitoring and focused review data, which may contain sensitive personal identifying information, personal financial information, and personal health information, will only be produced pursuant to an additional protective order to safeguard that sensitive information. We will file with the Court this week a proposed protective order for this purpose. That proposed protective order will follow the example of the protective order previously entered in *Coast Professionals, Inc. v. United States*, COFC No. 15-207.

Finally, as discussed in colloquy with the Court on March 23, 2018, we have reconfirmed with ED that neither the source selection authority nor individual evaluators received any communications or documents in an attempt to influence the final award decision from the Secretary of Education or other ED officials.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

s/ Patricia M. McCarthy
PATRICIA M. McCARTHY
Assistant Director

OF COUNSEL:

JOSE OTERO
General Attorney
Office of the General Counsel
U.S. Department of Education

s/ David R. Pehlke
DAVID R. PEHLKE
Trial Attorney
Department of Justice – Civil Division
P.O. Box 480
Ben Franklin Station

SARA FALK
General Attorney
Office of the General Counsel
U.S. Department of Education

March 28, 2018

Washington, D.C. 20044
Telephone: (202) 307-0252
Fax: (202) 353-0461
david.r.pehlke@usdoj.gov

Attorneys for Defendant